



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC

Introduction

This hearing dealt with the tenant's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking a monetary order for money owed or compensation for damage or loss.

The tenant, his advocate and representatives, the landlord and a witness attended the teleconference hearing, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

At the outset of the hearing, the landlord did not raise any issues regarding service of the application or the tenant's evidence. The landlord submitted no documentary evidence.

Thereafter the parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, respond to the other's oral and written evidence, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Is the tenant entitled to monetary compensation?

Background and Evidence

The undisputed evidence shows that this tenancy began in June 2011, monthly rent is \$1100, and the tenant paid a security deposit of \$550 at the beginning of the tenancy.

The tenant's monetary claim is \$1778.22, comprised of cost of a bedbug treatment for \$472.50, a new mattress and box springs for \$1005.75, and mattress and box springs protectors for 299.97.

In support of his claim, the tenant submitted that his wife suffered a bite in January 2014, which upon investigation turned out to be from a bedbug in their mattress. The tenant and his witness, his son, further submitted that when he notified the manager, JR as listed in the title page, JR telephoned someone, who instructed JR to throw out their mattress.

JR informed the tenants that the landlord would not pay for bedbug treatment and that the tenant would have to pay for the treatment, according to the tenant.

Additionally, in his absence, JR threw out the tenant's mattress and box springs, which were 1 ½ years old, according to the tenant.

Due to the landlord's refusal to provide a bedbug treatment and because the landlord disposed of their mattress and box springs without authority, the tenant is entitled to monetary compensation, according to the tenant.

The tenant's relevant documentary evidence included an invoice for the bedbug treatment and receipts for a new mattress and box springs and their bedbug protectors.

In response to the tenant's claim, landlord DW confirmed receiving a call later that day, but that JR had no authority to act for the landlord, as he was a cleaner, not an agent.

The landlord submitted that the tenant has resided in the rental unit for three years, with no bedbug issue, so that it was reasonable to conclude that the tenant brought in the bedbugs.

The landlord also contended he did not know if there were bedbugs in the rental unit and that the mattress was old, ripped and stained.

The landlord referred to the tenant's monetary claim as a "shake down".

In response to the landlord's submissions, the tenant stated that JR informed the tenant that he was the landlord. Further the pest control company stated they would perform a follow up treatment to ensure that there were no eggs.

The tenant's sponsor, HM, who was his sponsor to Canada, said that the mattress and box springs were 2 years old, and that they purchased the items for the tenant. The sponsor stated that the tenant has not re-paid them for the furniture as yet.

HM also submitted that the pest control company did not believe the mattress and box springs should be thrown out and the landlord, after finally making contact, alluded to the tenant being responsible for the bedbugs.

As to a response, JR said that he attempted to call the landlord on the day of the bedbug report, but was unsuccessful. JR also submitted that the mattress was old and stained.

Analysis

In a claim for damage or loss under the Act, which falls in sections 7 and 67, or tenancy agreement, the claiming party, the tenant in this case, has to prove, with a balance of probabilities, four different elements:

First, proof that the damage or loss exists, **second**, that the damage or loss occurred due to the actions or neglect of the respondent in violation of the Act or agreement, **third**, verification of the actual loss or damage claimed and **fourth**, proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

Pest control treatment-

I find that the tenant has proven that he notified the landlord of a bedbug issue in his rental unit.

Section 32 of the Act requires a landlord to provide and maintain a residential property in a state that complies with the health, safety and housing standards required by law and having regard for the age, character and location of the rental unit, make it suitable for occupation by a tenant. Under this section, I find the landlord was responsible for addressing the complaints of the tenant regarding a health and safety issue, in this case, the presence of bedbugs, by hiring a pest control company, and the landlord failed to show that he took any course of action in inspecting or addressing the tenant's complaint. In order for the landlord to confirm his suspicions that the tenant was responsible for the presence of bedbugs, the landlord would have to show this by way

of a professional's report; the landlord failed to produce any such evidence or any evidence at all.

I do not accept that the tenant was responsible for providing his own bedbug treatment under the Act and I therefore find that he is entitled for reimbursement. As such, I grant the tenant a monetary award of \$472.50.

Mattress and box springs-

Although the landlord contended that JR did not act under his authority, I find the evidence shows that JR acted as a landlord's agent. As such, I find that JR disposed of the tenant's mattress and box springs without authority from the tenants to do so. The landlord and JR contended that the mattress and box springs were old and stained; without such proof, I do not accept their evidence.

Although the tenant did not provide the cost of the original mattress and box springs, or the clear age, I do find that the tenant should be compensated for the landlord's agent illegally disposing of their personal property.

I find a reasonable amount to be \$500, considering that the mattress and box springs were used. I am not prepared to award the tenant replacement costs. I therefore find the tenant is entitled to a monetary award of \$500.

Mattress and box springs protectors-

I find that the mattress and box springs protector purchase to be a personal choice made by the tenant and therefore not the responsibility of the landlord.

I therefore dismiss the tenant's claim of \$299.97.

Due to the above, I find the tenant is entitled to a total monetary award of \$972.50, comprised of bedbug treatment paid by the tenant in the amount of \$472.50 and \$500 for the disposal of the tenant's mattress and box springs by the landlord's agent.

The tenant's monetary award of \$972.50 may be satisfied by withholding that amount from the next or a future month's rent payment. The tenant should inform the landlord of his intention to redeem this amount when making a reduced monthly rent payment. The tenant is advised that the monetary order is of no force or effect if he withholds his monetary award from a monthly rent payment.

If for some reason the tenancy should end prior to the tenant being able to redeem his monetary award by withholding this amount from a monthly rent payment or he chooses not to do so, I also provide the tenant with a final and binding monetary order for that amount.

I have not ordered the landlord to hire a licensed, professional pest control company to perform a bedbug assessment and treatment, as the tenant did not make this request and there was no evidence that the issue still existed. The landlord is advised that should he have any questions about the landlord's responsibility under the Act, he should contact the Residential Tenancy Branch in order to speak with an information officer. Contact information is enclosed with this Decision.

Conclusion

The tenant was partially successful with this application.

The tenant has been granted monetary compensation in the amount of \$972.50, which may be satisfied by deducting this amount from his next or a future month's rent payment.

The tenant has been granted a final, legally binding monetary order pursuant to section 67 of the Act for the amount of \$972.50, which I have enclosed with the tenant's Decision in the event that he should be unable to redeem his monetary award by withholding that amount from a monthly rent payment.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act* and is being mailed to both the applicant and the respondent.

Dated: June 20, 2014

Residential Tenancy Branch

